IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1320 OF 2005

Prakash Arjun Gaikwad Petitioner

versus

Bhagwan Waman Gaikwad & ors. Respondents

Shri A.Y.Sakhare, Sr.Counsel with S.D.Thakade and D.B.Lonkar for petitioner.

Shri Karandikar for respondents 1 to 7.

Shri Dani for respondent no.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. Heard Shri Sakhare - Senior Counsel for the petitioners and Shri Karandikar for respondents 1 to 7 and Shri Dani for respondent no.11.

2. Although the notice issued to respondents 8, 9, 12 and 14 is not served, in my view, the order that I propose to pass, would not prejudice them and therefore, their presence is not necessary.

3. Shri Sakhare, learned Senior Counsel

appearing for petitioner contends that the Additional Commissioner was in error while deciding that the revision application preferred before him to challenge the order passed by the Sub Divisional Officer can be withdrawn by the Principals of petitioner herein without any reference to the Power of Attorney issued in his favour and the right, title and interest created in the property which is the subject matter of Power of Attorney. He submits that the Additional Commissioner has gone into the issues which are not germane and relevant for the purposes of his decision on the revision application. If the nature of right of petitioner in the property and also the power conferred upon him by the Power of Attorney is something which is subject matter of a civil suit and indeed a civil suit is pending, then the revisional authority had no jurisdiction to enter into that controversy while allowing principals of the present petitioner, namely respondent nos.8 to 11 to withdraw the revision application filed before him.

4. There is much substance in the contention of Shri Sakhare. However, now that the civil suit is filed and is pending between the Power of

Attorney holder and the principal in a Civil Court and all issues would be considered therein, in my view, it is not necessary to decide the extent of authority and jurisdiction of Additional Commissioner, Konkan Division. His Observations and views would not influence the competent Civil Court while deciding the issues that are raised before it, namely, the extent of power conferred on the petitioner by the principals and whether there is any interest created in his favour in the immovable property in question.

5. All such matters are to be decided by the competent Civil Court which is the only adjudicating authority and observations of Sub Divisional Officer as well as Commissioner who are acting under Maharashtra Land Revenue Code, can have no bearing on the adjudication which should proceed upon its own merits and in accordance with law. Petition disposed of.

(S.C.DHARMADHIKARI, J.)